of any constitutional restriction, it would seem clear that the Fourteenth Amendment makes it impossible to hold valid any administration of the estate of a living man. A probate court, which is essentially a court of very limited jurisdiction, acting without a jury, has never been legally empowered to meddle with the goods of any living person, nor can it do so by any "due process of law."

NATURAL GAS — POLICE POWER. — The Supreme Court of Indiana has decided in the case of *Townsend* v. *State*, 47 N. E. Rep. 19 (Ind.), that an act forbidding the burning of natural gas in flambeau lights is not unconstitutional; being a legitimate exercise of the police power. It is possible to agree with the decision of the court on the ground that the law is simply a prohibition of the use of property in a manner contrary to public policy. This, however, does not at all imply a concurrence in what seems to be the chief ground for its decision. This is based chiefly on the analogy, drawn by a Pennsylvania court in *Gas Co.* v. *De Witt* (130 Pa. 235), between water, gas, and oil, and animals *feræ naturæ*, in that each of these substances becomes private property only on being reduced to actual possession, and the State, as holding the property for the benefit of the people at large, may decide on what terms it shall be reduced to private possession. So far, this analogy, although at first sight fanciful, seems quite correct on principle. *Gas Co.* v. *De Witt*, *supra*; *Gas Co.* v. *Tyner*, 131 Ind. 277; Gould, Waters, 2d ed., § 291.

When the court comes to its conclusion, however, the argument by analogy fails. The court reasons that, as the game laws, which regulate the capture of animals *feræ naturæ*, have been held constitutional, this present law, which regulates the use of a mineral "*feræ naturæ*," must also be held constitutional. It is submitted that the argument of the court is not sound. The scope and aim of the two laws are quite different. If the Indiana statute were analogous to the game laws, it would have for its subject matter the regulation of the conditions on which, or the ways by which, individuals could take possession of portions of the natural gas of the State. It does nothing of the sort. It does not at all deal with the question of how, or under what conditions, natural gas may become individual property. Assuming that the gas has already been reduced to possession, it concerns itself only with the manner in which he who has become the owner shall use his property. For this reason it would seem that while the decision of the court, as said above, may be correct, the analogy which forms its chief support in the opinion is of no value.

THE RIGHT TO USE THE MAILS. — The United States Circuit Court has recently rendered an interesting decision relating to the right of a citizen to use the government mail system. In the case of *Hoover* v. *McChesney*, 81 Fed. Rep. 472, the plaintiff, secretary of the Southern Mutual Investment Company, claimed that the defendant, a postmaster, wrongfully refused to deliver his mail. The defendant admitted the withholding, but justified it by two orders of the Postmaster General, alleged to be issued, in pursuance of certain acts of Congress, because the Postmaster General believed the company and the plaintiff were engaged in conducting a lottery contrary to law. The court held that the defendant was justified in withholding mail matter addressed to the

company or its officers, but was not so justified as to matter addressed to the plaintiff personally, and not as an officer of the company.

It is conceived that the court was correct in its conclusion. To hold the contrary, indeed, would be to assert that an executive officer has the right to determine what person or persons shall be excluded from the right to use the mail service; and such a doctrine, it would seem, is not only entirely inconsistent with a proper sense of justice, but unwarranted by the authorities.

The injunction in the present case was granted upon two grounds. The court says, in the first place, that the plaintiff, as a citizen of the United States, had a property right in the use of the mails, and that the action of the postal authorities deprived him of that right without due process of law, thus violating the Fifth Amendment to the Constitution of the United States. It is submitted that this view, which illustrates strikingly the present tendency of courts to interpret the Fifth Amendment liberally, goes too far, and puts a meaning on the word "property" not contemplated by the framers of the Constitution. The court claims also that the transaction amounted to a violation of the Fourth Amendment, securing the people against unreasonable searches and seizures of their papers and effects. This is believed to be the correct ground upon which to rest the decision, for the right secured by the Fourth Amendment extends to private papers in the mail as well as to those in one's own household.

RECENT CASES.

ADMIRALTY — JURISDICTION — LIENS UNDER STATE STATUTE. — A Massachusetts statute gave a lien for repairs and supplies furnished in the home port. *Held*, that the process was one *in rem*, and enforceable exclusively in the Federal District Courts, and the State Courts had no jurisdiction. *The Glide*, 17 Sup. Ct. Rep. 930; *Atlantic Works* v. *Tug Glide*, 157 Mass. 525, reversed.

The reasoning is briefly stated at the end of the opinion. By the laws of the United States the Federal District Courts have exclusive maritime and admiralty jurisdiction; the lien on a vessel is a *jus in re* and a maritime lien to secure the performance of a maritime contract, and equally within the maritime jurisdiction whether created by the common law or by statute. Although the common law gave a lien for repairs furnished a foreign vessel and the Federal courts had exclusive jurisdiction, *The Moses Taylor*, 4 Wall. 411, it gave none for those furnished to a home vessel. Such a lien, if it existed, would be enforced in the same way and be subject to the same jurisdiction as one existing without a statute. *Atlantic Works* v. *Tug Glide*, *supra*, Morton, J., dissenting. The statute gives the cause of action; the exclusive jurisdiction existed before. The characteristic opinion by Mr. Justice Gray presents a full review of the authorities.

CONSTITUTIONAL LAW — COLLATERAL ATTACK — DE FACTO OFFICER. — A was convicted in a city police court created under a statute which was unconstitutional because it did not properly classify municipal corporations. On petition for *habeas corpus*, *held*, that the constitutionality of the statute was open, and that A was entitled to release as, the police court having no legal existence, the judge was not a *de facto* officer and his acts were void. *Ex parte Giambonini*, 49 Pac. Rep. 732 (Cal.).

While professing to follow *Buck* v. *City of Eureka*, 109 Cal. 504, the judge really disregards the rule which he himself laid down in that case. There a statute authorized a council to create an office to be filled in a certain manner. The office was not created, but a person appointed in the manner specified acted as officer and was generally recognized as such. He was held to be a *de facto* officer, as the office had a potential existence under the statute. In the principal case it was not claimed that a city police court could not exist under the Constitution; the only objection to the statute was that it contained improper classifications. It is hard to see any more potential existence in an